

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re:

FLOUR CITY BAGELS, LLC,

Debtor.

Case No. 16-20213
(Chapter 11)

**SUBMISSION OF BRUEGGER'S FRANCHISE CORPORATION ("BFC"),
BRUEGGER'S ENTERPRISES, INC. ("BEI"), AND LDA MANAGEMENT COMPANY,
INC. ("LDAMC") (COLLECTIVELY, "BRUEGGER'S") IN FURTHER SUPPORT OF
DEBTOR'S MOTION FOR ORDER PURSUANT TO 11 U.S.C. §§ 365(a) AND (b)
AUTHORIZING DEBTOR TO ASSUME TWENTY-FIVE UNEXPIRED LEASES OF
NON-RESIDENTIAL REAL PROPERTY, AND IN RESPONSE TO THE LIMITED
OBJECTION FILED BY THE UNITED STATES TRUSTEE**

Bruegger's, by its counsel Einbinder Dunn & Goniea LLP, and its local counsel Menter Rudin & Trivelpiece, P.C., respectfully set forth as follows:

1. This submission is submitted in support of the Debtor's motion for an Order authorizing the Debtor to assume certain leases and in response to the United States Trustee's limited objection to the motion.

2. Bruegger's, Canal Mezzanine Partners, LP ("Canal") and United Capital Business Lending, Inc. n/k/a Bridge Funding Group, Inc. ("United"), along with the Debtor have worked diligently over the last several months to conclude an agreement to resolve the issues that have thus far prevented a resolution of this matter. As a result of these efforts, concluded early this week, Bruegger's, Canal, United and the Debtor have entered into a letter of intent (the "LOI"), which is annexed hereto as **Exhibit A**, which is described in more detail in the Supplemental Submission In Support of Motion For Order by the Debtor. *See* Docket Entry ("D.E.") 843.

3. As noted in the Debtor's Supplemental Submission, the LOI provides for Bruegger's, Canal, United and Debtor to submit a joint Disclosure Statement and Plan that will

allow the Debtor to emerge from Bankruptcy and maintain operation of the Debtor's bakeries. Needless to say, the continued operation of the bakeries under the leases which are the subject of this motion is essential for the resolution of this matter and for the Chapter 11 Plan to be submitted and if the Debtor's motion is denied, there is no avenue for the proposed Plan to proceed.

4. Moreover, it is respectfully submitted that the Debtor's proposed course of conduct - assuming the leases and thereby preserving the possibility of a successful reorganization - clearly satisfies the business judgment rule.

5. Conversely, were the Debtor to endorse the US Trustee's approach and allow all of the leases to be rejected, thereby ensuring the failure of the business, it could be correctly accused of abandoning its fiduciary duty to its creditors.

Dated: March 29, 2017

EINBINDER, DUNN & GONIEA LLP

By: /s/Michael Einbinder
Michael Einbinder, Esq.
Mackenzie L. Dimitri, Esq.
112 Madison Avenue, 8th Floor
New York, New York 10016
Telephone: (212) 391-9500
Facsimile: (212) 391-9025

and

MENTER, RUDIN & TRIVELPIECE, P.C.

By: /s/Jeffrey A. Dove
Jeffrey A. Dove, Esq. (Bar Roll No. 101532)
308 Maltbie Street, Suite 200
Syracuse, New York 13204-1439
Telephone: (315) 474-7541
Facsimile: (315) 474-4040

Attorneys for Bruegger's